

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIVIAN YOUNG and U.S. POSTAL SERVICE,
POST OFFICE, Capital Heights, MD

*Docket No. 02-450; Submitted on the Record;
Issued September 10, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has sustained an injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

On July 27, 2000 appellant, then a 48-year-old letter carrier filed an occupational disease claim alleging that she developed carpal tunnel syndrome in the performance of duty. She asserted that she first became aware of her condition and realized that it was caused or aggravated by employment factors on July 10, 2000. Appellant did not stop work.

In support of her claim, appellant submitted a treatment note from Dr. Murali Balakrishnan, a Board-certified orthopedic surgeon dated July 27, 2000, in which he diagnosed right cubital tunnel syndrome and recommended light duty.

In a letter dated January 11, 2001, the Office advised appellant that additional factual and medical evidence was needed in order to establish the claim. She, however, submitted no further information.

By decision dated March 1, 2001, the Office denied appellant's claim. The Office found that given the lack of evidence describing how she developed the diagnosed condition and a detailed medical report, fact of injury had not been established.

On May 17, 2001 appellant requested reconsideration. She submitted an unsigned statement dated March 22, 2001 in which she asserted that she first noticed her symptoms of numbness, stiffness and pain in her hand on a continual basis in June 2000. She alleged that her condition resulted from casing mail on a full-time basis for 28 years. Appellant also submitted a CA-20 form from Dr. Balakrishnan dated February 12, 2001, which provided a diagnosis of bilateral carpal tunnel syndrome, recommended surgical intervention and light-duty work.

By decision dated June 20, 2001, the Office denied appellant's application for review. The Office found that the evidence submitted neither raised substantive legal questions nor included new and relevant evidence to warrant a merit review of its prior decision.¹

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained bilateral carpal tunnel syndrome in the performance of duty.

A person who claims benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of her claim, including that she sustained an injury while in the performance of duty and that she had disability as a result.³ In accordance with the Federal (FECA) Procedure Manual, to determine whether an employee actually sustained an injury in the performance of her duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components, which must be considered in conjunction with the other.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition, for which compensation is claimed; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. Neither the fact that the condition became manifested during a period of federal employment, nor the belief of appellant that the condition was caused or aggravated by his federal employment, is sufficient to establish causal relation.⁵

In this case, appellant failed to submit sufficient factual and medical information prior to the March 1, 2001 decision to establish that she was injured in the course of her federal employment. Although, in a letter dated January 11, 2001, the Office requested that appellant submit factual evidence and provide a detailed medical report to establish that specific employment duties caused bilateral carpal tunnel syndrome, appellant did not submit the requisite evidence within the allotted timeframe. Because the record was devoid of sufficient factual and medical evidence at the time of the March 1, 2001 decision to establish that appellant's federal employment contributed to or aggravated her condition, appellant failed to meet her burden of proof.

¹ The Board notes that appellant submitted additional medical evidence following the Office's June 20, 2001 decision. However, the Board's jurisdiction is limited to evidence that was before the Office at the time of its decision. 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193.

³ See *Charles E. Evans*, 48 ECAB 692 (1997); see 20 C.F.R. § 10.110(a).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁵ *Manuel Garcia*, 37 ECAB 767 (1986).

The Board further finds that the Office properly exercised its discretion in refusing to reopen appellant's case for consideration of the merits.

Under section 8128(a) of the Act, the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,⁶ which provides that a claimant may obtain review of the merits if her written application for reconsideration, including all supporting documents, set forth arguments and contain evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by [the Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [Office].”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.⁷

In support of her request for reconsideration of the Office's March 1, 2001 decision, appellant submitted a CA-20 form of Dr. Balakrishnan, a Board-certified orthopedic surgeon and appellant's treating physician. In this form report, Dr. Balakrishnan diagnosed bilateral carpal tunnel syndrome, however, he failed to provide any history of injury as related by appellant or medical rationale explaining how or why employment factors caused appellant's hand condition. Consequently, this evidence is insufficient to warrant reopening the record for a merit review.

In the instant case, appellant submitted no new relevant and pertinent evidence in support of her May 17, 2001 request for reconsideration, nor did appellant show that the Office erroneously applied or interpreted a specific point of law. Accordingly, the Office properly denied appellant's request for review on the merits.

⁶ 20 C.F.R. § 10.606(b)(2).

⁷ 20 C.F.R. § 10.608(b).

The decisions of the Office of Workers' Compensation Programs dated June 20 and March 1, 2001 are affirmed.⁸

Dated, Washington, DC
September 10, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁸ With appellant's request for an appeal, she submitted medical evidence. The Board however, may not consider new evidence on appeal; see 20 C.F.R. § 501.2(c).